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broken tools that the jobbers would give him on regular calls [R. 102]. Respondent corporation made its own display truck available to petitioner and paid him $200 in December, 1941, for repairs and tires for said truck [Ex. 50, 6(d); pre-trial stipulation].

Petitioner paid an assistant with his own money and the assistant acted pursuant to his instructions [R. 242].

Petitioner was not furnished an office by respondent [R. 242], and the evidence showed that petitioner always kept on the road; he never had a desk since 1932. He merely used a mail forwarding service from the warehouse where the company's stock was carried [R. 79]. Petitioner never paid for an office in his life. All he had was mail forwarding; he never had a chair, desk, or anything like an office [R. 82, 102].

No deductions were taken from his commissions on account of Social Security taxes, Old Age benefits, or Unemployment Insurance [R. 242].

Specification of Errors to Be Urged.

The Court of Appeals erred:

1. In holding that petitioner was an independent contractor.

2. In holding that petitioner, when he entered the Navy, did not leave "a position (other than a temporary position) in the employ of respondent."

3. In reversing the judgment of the District Court.

Reasons for Granting the Writ.

1. The decisions of the Ninth Circuit in the instant case and in *Brown v. Luster,* 165 F. 2d 181, are directly in conflict with the decisions of the Tenth Circuit in *King v. S. W. Greyhound Lines* (cert. den. 335 U. S. 891), 169 F. 2d 497; and the Third Circuit in *Kay v. General Cable,* 144 F. 2d 653, and *Heller v. Inter-Boro Sav. and Loan Assn.,* 166 F. 2d 83. On the other hand the decision below finds support in a decision by the Eighth Circuit in *Hudspeth v. Esso,* 170 F. 2d 418, and the District of Columbia in *Rosenbaum v. Ceco Products,* 172 F. 2d 33, affirming 84 Fed. Supp. 954.

2. The decision may also be in direct conflict with a decision of the Seventh Circuit when it decides on appeal the case of *Travis v. Schwartz Manufacturing Company* (decided by the District Court in the veteran's favor on August 10, 1951, reported at 20 C. C. H. Labor Cases, Par. 66,501).

3. The decision is in conflict with an earlier decision of the Ninth Circuit, *Dodds v. Williams,* 163 F. 2d 724, which had cited with approval three District Court decisions in direct conflict with this decision (*Karas v. Klein* (D. Minn.), 70 Fed. Supp. 469; *MacMillan v. Montecito Country Club* (D. S. Calif.), 65 Fed. Supp. 240; *Lee v. Remington Rand* (D. S. D. Calif.), 68 Fed. Supp. 837).

4. The question is now ripe for decision by this Court. Although this Court has denied certiorari in *King v. S. W. Greyhound Lines (supra),* in which the defense of independent contractor was urged and in two other salesman cases in which the defense of independent contractor was implicit but was not urged (*Loeb v. Kivo* (C. A. 2, 1948), 169 F. 2d 346, cert. den. 335 U. S. 891, and

Levine v. Berman (C. A. 7, 1947), 161 F. 2d 386, cert. den. 332 U. S. 792), it has never yet ruled upon a case where reemployment benefits were denied a veteran upon the ground of his being an independent contractor. In fact, this is the only veteran's reemployment case where the Court of Appeals has taken job rights away from a veteran by reversing a District Court which had found in his favor. (See tabular digest of cases—Appendix "A" this petition.) As a result a clear issue of law on this point is presented in this case.

5. The question here presented is of the utmost importance in the administration of the Universal Military Training and Service Act. The question has either arisen or been implicit in 26 lower court decisions and with contrariety in result. (See tabular digest of cases—Appendix "A" this petition.)

That the question must arise numberless times in controversies where recourse to the courts was not had is established by the fact that in 1940 there were 592,327 traveling salesmen and sales agents in the United States, 239,142 insurance agents and brokers, 90,094 canvassers and solicitors, and 54,370 newsboys (Sixteenth Census of the U. S.—1940, Vol. III, Table 58, p. 76, *Cf.* "Sales Manager's Handbook," Aspley (6th Ed., Chicago, 1950) p. 395).

6. The decision is in conflict with those decisions of this Court which have applied the "economic reality" test of employment rather than common law test (*Rutherford Food Corp. v. McComb* (194..), 331 U. S. 722; *United States v. Silk* (194..), 331 U. S. 704, and *Harrison v. Greyvan Lines* (194..), 331 U. S. 704).

Although the 80th Congress passed statutes to require the application of common law employer-employee control

doctrines under the Labor-Management Relations Act (29 U. S. C. 152(3)) and the Social Security Act (Gearhart Amendment, 62 Stat. 438, amending 26 U. S. C., Secs. 1426(d), 1607(i); 42 U. S. C., Sec. 1301(a)), the broad coverage of the Selective Service Act was left unchanged and has now been reenacted into the Universal Military Training and Service Act.

Men whose lives are governed by the Universal Military Training and Service Act are entitled to know now what future employment rights they will have when they come out of the service.

7. It is in the public interest that a clear declaration be made by this Court to the effect that all persons who held positions in civilian life comparable to that held by the petitioner in this case are entitled to be restored to that position upon honorable discharge from the service and that such right of restoration cannot be defeated by characterization of the veteran as an "independent contractor" in contradiction to the fundamental factors determining the true relationship.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Circuit	Name of Case	Date	C. A. Citation	C. A. Action	D. C. Citation	Re-employment benefit to veteran	"Not a position in the employ of"
1	Salzman v. London Coat of Boston	1946	156 F.(2) 538	affirming	62 F.S. 371	denied	No
1	Trusteed Funds v. Dacey	1947	160 F.(2) 413	reversing	66 F.S. 321	granted	Yes
1	Same	1947	.....	.....	[2]72 F.S. 611	denied	No
2	Loeb v. Kivo (cert. den. 335 U. S. 891)	1948	169 F.(2) 346	affirming	77 F. S. 523	granted	No
3	Kay v. General Cable	1944	144 F.(2) 653	reversing	Unrep.	granted	Yes
3	Heller v. Inter-Boro Sav. & Loan Assn.	1948	166 F.(2) 83	affirming	12 C.C.H.[3] 63,744	granted	Yes
3	Allyn v. Abad	1948	167 F.(2) 901	reversing	Unrep.	granted	No
3	O'Connor v. Yardley	1948	171 F.(2) 40	affirming	16 C.C.H. 64,892	granted	Yes
4	Stanley v. Wimbish	1946	154 F.(2) 773	reversing	Unrep.	granted	Yes
4	Meyers v. Barenberg	1947	161 F.(2) 850	affirming	68 F.S. 697	denied	Yes[4]
4	Howie v. Lance	1949	172 F.(2) 107	affirming	Unrep.	denied	No
4	Bowen v. Home Beneficial Life	1949	183 F.(2) 376	affirming	18 C.C.H. 65,720	denied	No
7	Frank v. Tru-Vue	1946	(S. D. Ill.)	.....	65 F.S. 220	denied	Yes[5]
7	Levine v. Berman (cert. den. 332 U. S. 792)	1947	161 F.(2) 386	reversing	Unrep.	granted	No
7	Schwetzler v. Midwest	1949	174 F.(2) 612	affirming	Unrep.	denied	No
7	Travis v. Schwartz	August 10, 1951	(E. D. Wis.)	[6]	20 C.C.H. 66,501	granted	Yes
8	Whitver v. Aalfs-Baker	1946	(D. Minn.)	.....	67 F.S. 524	granted	No
8	Karas v. Klein	1947	(D. Minn.)	.....	70 F.S. 469	granted	Yes
8	Hudspeth v. Esso	1948	170 F.(2) 418	affirming	74 F.S. 123	denied	Yes
9	MacMillan v. Montecito Country Club	1946	(D. S. D. Calif.)	.....	65 F.S. 240	granted	Yes
9	Lee v. Remington-Rand	1946	(D. S. D. Calif.)	.....	68 F.S. 837	granted	Yes
9	Dodds v. Williams	1947	163 F.(2) 724	affirming	68 F.S. 995	granted	Yes
9	Brown v. Luster	1947	165 F.(2) 181	affirming	11 C.C.H. 63,482	denied	Yes
9	SANGER v. PLOMB TOOL	1951	Not yet reported	reversing	Unrep.	denied	Yes
10	King v. S. W. Greyhound Lines (cert. den. 335 U. S. 891)	1948	169 F.(2) 497	reversing	Unrep.	granted	Yes
D. C.	Rosenbaum v. Ceco Products	1948	172 F.(2) 33	affirming	84 F.S. 954	denied	Yes[5]

[1] = Decision placed solely upon this defense.
[2] = On retrial.
[3] = C.C.H. Labor Cases.
[4] = Defense urged in District Court only and there decided in Veteran's favor.
[5] = Decision NOT based solely on this defense.
[6] = Formal judgment not yet entered. Counsel state appeal will be taken to 7th Circuit.

Urged.

ion y rary	Employer's conditions changed	Veteran unfit for re-hiring	Job Description	Mode of Compensation	Form of Contract	Termination Provisions	Other lines or outside income	Equipment furnished by employer	Place of work supplied by employer
s[1]			Salesman		Written	At will		Yes	Yes
s	Yes		Salesman	Commissions	Written	Fixed term		Yes	Yes
		Yes[1]	do	do	do	do		do	do
	Yes		Salesman	Commissions				Yes	"90% outside"
	Yes		Physician	Salary	Oral	At will	Yes	Yes	Yes
s	Yes		Lawyer	Fees					
	Yes		Salesman	Salary	Written	1 year duration		Veteran paid $10 a week for "car expenses"	
			Golf pro						
s			Salesman	Salary and commissions	Oral	At will	Yes	No	Yes
	Yes		Lawyer	Salary and commissions					
s[1]			Salesman	Commissions				Veteran furnished own truck	
	Yes		Salesman	Commissions				No	No
	Yes	Yes	Salesman	Commissions	Written		Yes	No	No
	Yes		Salesman	Commissions					
			Salesman					Yes	No
			Salesman	Commissions	Written		Yes	No	No
			Salesman	Commissions				Travel expenses paid	No
	Yes		Rubbish hauler	Fixed fees and profits	Oral			No	No
			Plant lessor	Commissions	Written	30 days notice		Yes—but maintenance costs paid by veteran	
			Golf pro	Profits from sales of merchandise and services		At will			
			Salesman	Commissions	Written		Yes	No	No
			Taxi-fleet operator	Commissions	Oral	At will		Yes	Yes
			Salesman	Commissions	Oral	At will		No	No
	Yes		Salesman	Commissions	Oral to 1938—written since	At will to 1938 30 days to 1941 One year since	Yes	No—except display truck	No
			Station agent	Commissions	Written	10 day notice	Yes	No	No. Veteran paid rent
	Yes		Sales representative	Commissions	Written		Yes	No	No